## APPEAL NO. 010585

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 5, 2001. With respect to the single issue before her on appeal, the hearing officer determined that the appellant's (claimant) average weekly wage (AWW) is \$263.06. In his appeal, the claimant asserts error in that determination and asks that we enter a new decision that his AWW is \$379.97. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

## **DECISION**

Affirmed.

The hearing officer used the fair, just, and reasonable method found in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 128.3(g) (Rule 128.3(g)) to calculate the claimant's AWW. The hearing officer determined that the claimant's total wages in the 13-week period preceding this were \$3,419.80 and neither side is disputing that determination on appeal. The only issue before us is whether the hearing officer should have divided that number by 13 or 9. The claimant contends that he did not work in 4 weeks of the 13-week period because of illness and an ongoing dispute he was having with his supervisor. Rule 128.3(g) states that if an employee has lost time from work, without remuneration due to illness, weather, or other cause beyond the control of the employee, the Texas Workers' Compensation Commission may use any method that it considers fair, just, and reasonable to calculate the AWW. The hearing officer was not persuaded by the claimant's testimony that he did not work in 4 of the 13 weeks prior to his injury due to a cause beyond the claimant's control. We note that the claimant did not present evidence in addition to his testimony in support of his assertion that he did not work in those 4 weeks due to illness and the hearing officer specifically noted that she did not find the claimant's testimony Nothing in our review of the record reveals that the hearing officer's credible. determination that the claimant did not miss work due to a cause beyond his control is so against the great weight of the evidence as to compel its reversal on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, she did not err in dividing the total wages by 13 rather than 9, as the claimant had requested.

CONCUR:	Elaine M. Chaney Appeals Judge
Gary L. Kilgore Appeals Judge	
Philip F. O'Neill Appeals Judge	

The hearing officer's decision and order are affirmed.